

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) Cause No. 4:13CR00076 AGF
DWAYNE JOHNSON,)
Defendant.)

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW Defendant, Dwayne Johnson, by and through counsel, and files this sentencing memorandum requesting a sentence of twenty-four months. In support of his request, Defendant states the following:

1. Defendant pleaded guilty to two counts of Aggravated Identity Theft under 18 U.S.C. §1028A(a)(1);
2. 18 U.S.C. §1028A requires that a guideline sentence of twenty-four months be imposed for each count and that probation be denied. Further, it is in this Court's discretion to run the counts consecutively or concurrently, in whole or in part. (¶¶ 3, 61, and 62 of the Pre-Sentence Report ("PSR").);
3. This Court can consider the nature and circumstances of the offense and the history and characteristic of the defendant when fashioning a sentence that is sufficient, but not greater than necessary, to achieve the goals of 18 U.S.C. §3553(a). A concurrent sentence of twenty-four months will achieve the goals of 18 U.S.C. §3553(a)(2) in that it

reflects the seriousness of the offense, provides just punishment, will afford adequate deterrence and protect the public.

4. The PSR references several factors that can be considered under 18 U.S.C. §3553(a) to warrant a concurrent sentence of twenty-four months. Mr. Johnson is thirty-four years old and a life long resident of Tampa, Florida. Mr. Johnson's father was murdered when he was just five years old. Mr. Johnson successfully served in the United States Navy for five years. He has three children and a close relationship with his mother. (¶ 38-43 PSR).

5. The Government and the PSR concluded that Mr. Johnson and his co-defendants, Mr. Bibbs, Ms. Kirkendoll and Ms. Taylor, were less culpable than co-defendant Ms. Henderson who prepared and filed the false tax returns and directed the activities of the co-defendants. (¶ 20 PSR). Ms. Henderson has already received a sentence of 144 months, while co-defendants Mr. Bibbs (five months), Ms. Kirkendoll (probation) and Ms. Taylor (probation) received considerably lower sentences. (¶¶ 7-10 PSR). A sentence of twenty-four months for Mr. Johnson would be commensurate with his culpability in this case relative to the co-defendant.

6. The PSR identified the one victim in this case as the Internal Revenue Service that suffered an actual loss of \$835,883. (¶ 22 PSR). Mr. Johnson has accepted his responsibility for participation in these crimes and will be jointly and severally liable upon his release from prison for the restitution of \$835,883 while he is trying to assist in the support of his children. A consecutive sentence will delay Mr. Johnson's ability to

become gainfully employed and be a detriment to his repayment of the restitution while supporting his family.

7. A concurrent sentence of twenty-four months is sufficient, but not greater than necessary, to promote justice, protect the public, and take into consideration Mr. Johnson's particular circumstances and characteristics.

WHEREFORE Defendant respectfully requests this Court impose a concurrent sentence of twenty-four months on each count.

Respectfully Submitted,

/s/ David Bruns

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I certify that on November 22, 2013 a true copy of the above was served on the U.S. Attorney's Office via Court electronic filing system on the above date.

/s/ David Bruns
